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04/26/90

# WARNER, NORCROSS & JUDD

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April 26, 1990

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Ms. Beth Henning  
Assistant Regional Counsel  
U. S. Environmental Protection  
Agency, Region V  
230 South Dearborn Street  
Chicago, Illinois 60604

VIA TELECOPIER



Dear Ms. Henning:

This letter is submitted on behalf of Eagle-Picher Industries, Inc. ("Eagle-Picher") concerning the Unilateral Administrative Order issued pursuant to Section 106 of CERCLA regarding the Albion-Sheridan Township Landfill. Eagle-Picher appreciated the opportunity to meet with you and other U.S. EPA representatives on Monday, April 23, to discuss this matter further. This letter is sent as a result of that meeting and as required in the proposed Order.

Eagle-Picher is the former owner of Union Steel Products ("Union Steel") which was operated as a division of Eagle-Picher until March 18, 1982. At that time, Eagle-Picher sold the assets of the Union Steel division to a corporation that continued to operate the business under the Union Steel name. The assets transferred to the new owners included any records that might have existed regarding Union Steel's pre-1982 waste disposal activities. Under the terms of the Purchase Agreement, the new owners agreed to retain all business records of the division and would destroy them only after having given notice to Eagle-Picher. Eagle-Picher has been advised since receipt of the Order that no records exist. If such records have been destroyed, Eagle-Picher was not provided with notice. In any event, Eagle-Picher has no liability with respect to the site as a result of any activity that took place after the 1982 sale of the division.

Eagle-Picher understands that U.S. EPA intends to have the Unilateral Administrative Order require the Respondents, including Eagle-Picher, to remove and dispose of the 27 drums currently located on the site surface. Sixteen of those drums are believed to contain some amount of material; 11 are considered by U.S. EPA to be empty. In addition, the Respondents are required to clean one above-ground empty storage tank, and two below-ground gasoline tanks. One of the gasoline tanks is known by U.S. EPA to be empty. The other tank may or may not contain material. Additionally, U.S. EPA has asked the Respondents to erect eight-foot tall gates at certain locations in the landfill and to fence certain portions of the landfill boundaries after having conducted a site survey.

The Albion-Sheridan Township Landfill functioned as the only landfill for Albion and its vicinity from 1966 to 1971. The City of Albion and the surrounding county have many industries. U.S. EPA has sent the Administrative Order to only the widow of the former owner/operator of the facility and four companies. During the conference on Monday, April 23, the Agency acknowledged there are other identified PRPs for the Site who have not been named as recipients of this Order, ostensibly because the Agency did not have information in the Administrative Record that they were associated with the materials sought to be removed. As noted during that meeting, that rationale for exclusion makes no sense, since the Administrative Record does not support the selection of any of the current recipients of the Order to the exclusion of anyone else. There is simply not rhyme nor reason to the Respondent designation process.

In the first instance, nothing could possibly link Eagle-Picher to the underground gasoline tanks on the Site. Secondly, the above-ground tank is empty and there is no information available in the Administrative Record as to its prior contents, nor to any kind of purported relationship to Eagle-Picher. Third, there is nothing uniquely distinctive about the current Respondents to require them, as opposed to other identified PRPs, to secure the Site. In addition, the drums sought to be removed appear to have been deposited on the Site following closure of the Site in 1981. There is nothing in the Administrative Record to establish that these drums were on the Site in or before 1981; on the contrary, available information indicates that the drums were placed there only after that date. Finally, as to Eagle-Picher, there is nothing in the Administrative Record that links the Company to these drums or to any materials contained in these drums.

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On May 6, 1985, the District Supervisor of the Jackson District Office of the Michigan Department of Natural Resources, Mr. Ron Kooistra, prepared a memorandum based upon a visit to the Site in June 1984 that he conducted with Mr. Gene Hall, also of the Jackson District Office. The memo concluded that during the inspection, they "discovered no evidence of any hazard via direct contact." While the memorandum does not refer to the existence or lack of existence of exposed drums at the Site, Mr. Kooistra's conclusion would be inconsistent with the presence of drums. Indeed, the conclusion that there was no hazard resulted in a determination not to fence in this Site. As a result, \$82,500 that had previously been budgeted to fence the Site were reallocated for use elsewhere. A copy of that memorandum is attached to this letter as Exhibit A. In addition, Eagle-Picher understands that one of the other recipients of this Order, Harvard Industries, will be submitting information to the Agency establishing that in 1988, only eight drums were on the Site.

In short, available information indicates that the present 27 drums have all been deposited at the Site only after its closure. Accordingly, there is no conceivable basis in law or in fact to request Eagle-Picher to remove and dispose of these drums. After 1982, Eagle-Picher did not even own the Union Steel facility. The drums presently located at the Site appear to have been placed there after 1985. Since the drums, containers and tanks presently on the surface of the Site constitute the sole basis for U.S. EPA's determination that the threatened release of hazardous substances from the Site "may present an imminent and substantial endangerment to the public health, welfare, or the environment," Eagle-Picher believes that it should not be subject to the Order.

There is nothing contained in the Administrative Record that links Union Steel with the materials sought to be removed. Two letters from 1966 were provided to us during the April 23 meeting. Neither are probative of the issue: they do not confirm any Union Steel materials going to the Albion-Sheridan Township Landfill. The hearsay reference in a memorandum summarizing a telephone conversation between U.S. EPA and Mr. Arlo Wilkinson stating that Union Steel had sent "little liquids in drums" is virtually meaningless. At best it is extremely ambiguous. At the very least, it does not in any way link the Company to the materials sought to be removed. It certainly does not constitute a sufficient basis for the issuance of a Section 106 Order.

The Order requires Eagle-Picher and the other recipients to obtain access to the Site for the purpose of performing the actions prescribed in the Order. The question of current ownership of the Site is a matter of dispute. It is Eagle-Picher's understanding that Mrs. Stevick may not be the current owner of the site, based upon comments made by her attorney, Mr. Charles McClafferty of Jackson, Michigan. The Stevicks apparently have not paid property taxes on the Site following its closure in 1981. In addition, information is available that suggests that the City of Albion may have an interest in the property. Attached as Exhibit B is a newspaper article dated March 15, 1966, that refers to an agreement between Mr. Stevick and the City of Albion. While we have not seen the Agreement referred to in the article, it appears that the City of Albion may be obligated to acquire the property. Since the Agency has denied Eagle-Picher access to documents related to its search for Potentially Responsible Parties, we do not know the extent to which U.S. EPA has attempted to answer the questions of Site ownership. Site ownership issues must be completely resolved in order for the recipients of this Order to obtain legal access to perform the action demanded. In addition, current owners must be included on this list of recipients of this Order.

As previously noted, and as discussed during the April 23 meeting, Eagle-Picher believes that other parties must be added to the Order and included within the universe of Potentially Responsible Parties. Documents distributed by U.S. EPA during the April 23 meeting that purported to substantiate the inclusion of the current respondents, identified the following additional parties: Albion Sanitary Service, McGraw Edison, Refuse Service Inc., City Disposal Co., Scott's Disposal, Ideal Castings, Albion Metal Products, and Decker Manufacturing. These companies appear to be of the same "class" of parties as those who have been named. U.S. EPA should include these parties as recipients of the Order. Moreover, the City of Albion must be added. U.S. EPA's own files clearly establish that the City exercised control over the operation of the landfill pursuant to its agreement with Mr. Stevick. See Response 6(a) of Mr. Stevick to the 1988 Information Request. Finally, U.S. EPA's files disclose that the 1988 Information Requests sent to McGraw Edison and Corning Glass Works were returned to U.S. EPA as undeliverable. These two companies were major industrial employers in Albion during the relevant period of time and most certainly sent some waste materials to the only operating landfill in the area. It is inconceivable that U.S. EPA has not yet bothered to follow up on this. Information Requests with very short response times should be sent immediately to these two entities. They should then be sent the Orders if appropriate. The current addresses

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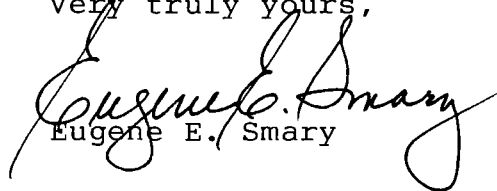
then be sent the Orders if appropriate. The current addresses for these companies are as follows: Corning Glass Works, c/o Corning Incorporated, The Corporation Company, 615 Griswold, Detroit, Michigan 48226; McGraw Edison, c/o Cooper Industries, P. O. Box 446, Houston, Texas 77210.

Finally, the terms of the Order must be carefully discussed. The parties did not have an opportunity to discuss the terms of the Order with you on April 23. However, as I indicated at the conclusion of the meeting, we believe that the Order must be carefully reviewed. Specifically, the Order must be modified to reflect the actual work sought to be required. The scope of the work is the key to the Order and the Order must reflect that the parties are being required to do no more than the specified tasks. This is particularly important in light of the fact that this was a municipal landfill and numerous PRPs are yet to be added.

In accordance with our discussion on Monday, Eagle-Picher appreciates your agreement to consider an extension of the effective date of the Order. Under the circumstances presented here, particularly given the presence of Brooks Foundry and its involvement with the Bankruptcy Court, such an extension is essential. In addition, I would like to renew my request that you extend the date by which the parties must notify the Agency of their willingness to comply with the terms of the Order.

If you have any questions regarding any of the matters discussed above, please call me.

Very truly yours,

  
Eugene E. Smary

pdv  
Attachments

cc: Eagle-Picher Industries, Inc.  
Harvard Industries, Inc.  
Brooks Foundry  
Seiler Tank Truck Service, Inc.

May 6, 1985

641-307-Calhoun Co  
Albion-Sheridan L.F.

TO: Andy Hogarth, Chief, Remedial Action Section

FROM: Ron Kooistra, District Supervisor, Jackson District Office

SUBJECT: Albion-Sheridan Landfill

As per our discussions at this district office on 4/29/85, we are submitting this memo as a request for funding change for the above named facility. Gene Hall and I inspected this site in June of 1984. We walked throughout the entire fill area. The final cover on the fill was of available materials (sand and gravel). During our inspection, we saw no evidence of any hazard via direct contact.

Since this site is funded for fencing, we have concluded that this site should not be finced and the funding be applied to another site. If you need any further information, please call me. We would recommend utilizing these funds for the Mosherville oil pit cleanup for which we plan to submit an RFA this fiscal year.

RK:lc

cc: G. Hall  
D. Dennis  
Calhoun Co. Health Dept.  
D. Parsons

EXHIBIT A

## Waste Yard Plans OK'd *3/15/66*

**Will Be Located  
Mile East of  
City Near Erie Rd.**

The City of Albion is ready to enter into contract with Gordon Stevick, an earth moving contractor, to operate a waste yard on its behalf north of East Erie road, just west of the Jackson county line, the city council agreed Monday evening.

City Manager Albert Glassford and City Atty. John Brundage were instructed to draw up a ten-year contract, which will cost the city \$15,000 annually for the dump that is expected to last from 15 to 20 years.

The dump to be operated by Stevick has gained tentative approval of the Calhoun County Health department. It will be operated on a "sanitary land fill" basis, as required by a new state law.

Albion's present dump, located in the northwest section of the city is to be closed by July 1.

The city's agreement with Stevick stipulates that if Stevick ever goes out of business the rolling land involved will be sold to the city on a used-parcel basis. The dumping area is hidden from East Erie road by a sizeable rise.